

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN W. HESS ,

CASE NO. 2:13-cv-0343

Petitioner,

JUDGE JAMES L. GRAHAM

v.

Magistrate Judge Kemp

NEIL TURNER, WARDEN,

Respondent.

REPORT AND RECOMMENDATION

Petitioner, formerly a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. This matter is before the Court on Respondent's motion to dismiss for failure to prosecute. For the reasons that follow, the Magistrate Judge **RECOMMENDS** that the motion be **GRANTED** and that petitioner's claims be **DISMISSED**.

I. PROCEDURAL HISTORY

This case was filed on April 4, 2013 in the Northern District of Ohio. According to the petition, which petitioner signed on March 17, 2013, petitioner was then incarcerated at the North Central Correctional Complex, serving a four-year sentence for gross sexual imposition and disseminating matters harmful to juveniles. The sentence was imposed on November 20, 2009. (Doc. 1). The case was then transferred to this Court because the conviction occurred in Morrow County. (Doc. 3).

This Court issued a show cause order on April 16, 2013. It was mailed to

petitioner at his institution but came back marked "Not deliverable as addressed." (Doc. 7). The Court then attempted delivery at a different address, 36979 Beach Fork Rd, Pomeroy OH 45769. That mailing was not returned and appears to have been successfully delivered.

On June 7, 2013, Respondent moved to dismiss the case for failure to prosecute, noting that all of its attempts to communicate with petitioner by mail at his institution had also been unsuccessful. The Court notes that two of its orders, Docs. 9 and 12, have also been returned; both were addressed to petitioner at his institution. Petitioner has not updated his address with the Court.

The failure of petitioner to provide the Court with a current address is a strong indication that he no longer wishes to pursue this case. Enough time has passed to allow the Court to reach that conclusion. It is therefore recommended that the motion to dismiss (Doc. 11) be granted. However, the Clerk will be directed to serve a copy of this Report and Recommendation upon petitioner at 36979 Beach Fork Rd, Pomeroy OH 45769. If he fails to respond, the Court should enter an order adopting the Report and Recommendation and dismissing the case.

II. RECOMMENDED DISPOSITION

For all the foregoing reasons, the Magistrate Judge **RECOMMENDS** that Respondent's motion to dismiss (Doc. 11) be granted and that the petition for a writ of habeas corpus be **DISMISSED**. The Clerk shall mail a copy of this Report and Recommendation to petitioner at 36979 Beach Fork Rd, Pomeroy OH 45769.

III. PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp
United States Magistrate Judge